

BEFORE THE CITY OF ATLANTA

BOARD OF ETHICS

In the matter of :

Robert Godfrey

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Case No. CO-09-001

REPLY TO PROBABLE CAUSE REPORT

I. JURISDICTION

The essence of the probable cause determination in this matter is that the undersigned compromised his legal representation of the City of Atlanta in exchange for meals paid for by opposing counsel in the cases that were active litigation. This conclusion purports to be supported by findings 4, 5 and 6 in the Summary Report that draws a tenuous connection between settlement of two cases in November 2008 and dinners in 2006 and 2007, totaling approximately \$450.00.¹ Beyond being untenable, this conclusion amounts to an allegation of unethical conduct by a member of the State Bar of Georgia over which the Supreme Court of Georgia has exclusive jurisdiction through delegation to the State Bar.

As noted by the Georgia Supreme Court “[t]he regulation of the practice of law is a judicial function, and the Georgia Constitution vests the judicial power of the State in the courts....[t]he Supreme Court of Georgia is endowed with the inherent and exclusive authority to govern the practice of law Georgia.” *Wallace v. State Bar of Georgia*, 268 Ga. 166 (1997). While the Code of Professional responsibility that is applicable to all Georgia lawyers “provides specific sanctions for the professional misconduct of the attorneys whom it regulates, it does not establish civil liability of attorneys for their professional misconduct, nor does it create remedies in consequence thereof.” *Davis v. Findley*, 262 Ga. 612 (1992).

The Georgia Code of Professional Responsibility provides rules and guidelines in the form of Commentary that govern the very type of conduct alleged in the Probable Cause suggestion. Rule 1.7 addresses conflicts of interest generally. Rule 1.8 proscribes certain transactions and conduct that may create a conflict of interest, including the use of information gained in the professional relationship “to the disadvantage of the client.” As noted above, the Probable Cause Report suggests that these rules have been violated and the State Bar of Georgia and the Supreme Court of Georgia are the exclusive arbiters of this type of allegation. As such, if this matter is to be pursued it must be referred to the State Bar.

¹ There is no indication as to the number of participants in these dinner meetings or the amount attributable any one individual.

II. THE MERITS

The basis of the alleged violation under the City's Standards of Conduct is that the Martin & Jones law firm is a "prohibited source" if they represented plaintiffs seeking official action from the City. This conclusion stretches the definition of that term far beyond what was contemplated by the Mayor and Council in enacting the Ethics Code and ignores the reality of what litigation involves. An aggrieved party may seek official action from the City by filing a claim with the City's Claims Department. That individual indeed is seeking official action in attempting to be reimbursed for losses through the claims process.

When that process is unsuccessful, the claimant individually or through counsel may pursue the claim through litigation in the state or federal court systems, at which time the parties to the action immediately assume an adversarial position. The relief sought is not from the City but from that court in which the action is filed. It is an attempt to have a judge or a jury to determine the respective rights of the parties and to have the court to order the City to pay damages if the plaintiffs are successful. To defend an action in a court of law has been defined by *Black's Law Dictionary* as to "contest and endeavor to defeat a claim or a demand made against one in a court of law." *Black's* further defines an adversary as "the opposite party in a writ or action" and an adversary proceeding as "one having opposite parties; contested, as distinguished from an *ex parte* application." The plaintiff or complainant in a court action is the "one who applies to the courts for legal redress." Thus, the plaintiffs in any case against the City or against one of its officers are seeking redress from the court and not official action from the City. That official action already has occurred in denial of the claim prior to litigation.

The report seeks to get around this obvious adversarial setting and to create a premise for the "prohibited source" finding by tying the conduct at issue, i.e., two dinners, to City Council approval of settlements. In so doing, aside from the temporal disconnect, what this analysis fails to consider is that there is no evidence that the discussions that occurred during dinner conversations on July 13, 2006 and December 3, 2007 in any way related to settlements that occurred in the last quarter of 2008, rather than having been anything other than informal discovery conferences. Nor is there any consideration given to the fact that the undersigned was defending in excess of thirty cases in which Martin & Jones was opposing counsel; the fact that some of these cases went to trial with good outcomes for the City; and, the fact that the lawyers handling the litigation had no intention or desire to settle the cases that did go before City Council.²

The Ethics Officer has not received any information from any source that would allow her to create this nexus to support her conclusion. Indeed, the information she has received from me and from Martin & Jones has presented an entirely different set of facts that she ignores. At

² As counsel in this litigation, I am by the Rules of Professional Responsibility from disclosing to this body the rationale, reasons or communications that led to the settlement of these cases, although in a proceeding before the State Bar, I would be allowed to divulge such information in my defense.

the same time, due to the rules of professionalism that govern my conduct as a lawyer, including the attorney-client privilege, I am prevented from further defending against these unsupported conclusions.

I do not make these representations without some background that goes beyond the specific allegations before this body. When Mayor Franklin initiated the process of strengthening the Ethics Code, she named me Interim Ethics Officer, a capacity in which I served until Ms. Looney's arrival. I was responsible for the initial training of employees, elected officials and appointed members of the various boards and commissions. In addition to the initial training, I had all the responsibilities that Ms. Looney later assumed. As such, I am no stranger to what the Code provides or to what was the intent of the Mayor and Council. I can assure you that the intent was not to have the Code be so expansive as to encompass the type of claim here asserted.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Robert N. Godfrey", with a stylized flourish at the end.

Robert N. Godfrey